

## DECIDED AS MATTER OF FORM

Judge Howland Rules Against the Governor in the Carson Mandamus Suit.

Both Parties Seemed to Regard the Proceedings as Formal, and the Judge Accommodated Them—Various Phases of Litigation.

The argument on the demurrer of Joseph L. Carson to the answer of Governor Hovey in the suit of the former for a mandate for a commission as a trustee of the Insane Hospital, he claiming to have been elected as such by the last General Assembly, was heard yesterday morning before Judge Howland in the Circuit Court. He sustained the demurrer simply as a matter of form. The original suit, it will be remembered, was filed by Carson, asking for a writ of mandate to compel Governor Hovey to issue a commission to him, to which Attorney-General Michener filed an answer on the part of the State, showing wherein the law claimed to have been passed by the Legislature was unconstitutional. Carson's attorneys then filed a demurrer, complaining that the Governor's grounds for refusing to issue the commissions were not sufficiently well founded to sustain his action. James E. McCullough, of this city, and Judge Hays, of Sullivan, appeared for Carson, and Attorney-General Michener for the State, the argument covering about two hours' time. The Attorney-General stated the grounds he had taken in filing the answer for Governor Hovey, and claimed that they were legal, and could be authenticated. He went along much the same line he followed in arguing against the constitutionality of the provisions of the Curtis and Bigham bills.

Mr. McCullough occupied considerable time in attacking the Governor's position, which he reviewed in saying that the reasons why that official refused, and still refused to commission the plaintiff were: First, that the bill in question failed to become a law because it was not again returned to himself or his office after his veto and was not by him deposited in the office of the Secretary of State, as required by law. Second, that the bill failed to become a law because there is no legal record of the action of either house of the General Assembly subsequent to the return of the bill, assigned by himself to the House of Representatives, as required by law. Third, that the bill is unconstitutional and void for the reason that it seeks to vest the power of appointing a State officer in the Legislature and not in the Governor, as required by the Constitution. The first and second of these propositions were discussed together, as Mr. McCullough claimed both are upon the question of the authentication of the bill. Having been passed by both houses of the General Assembly it was duly signed by the residing officers of both houses and the bill was presented to the Governor, who did not approve it and consequently did not sign it. After its reconsideration, it was again passed by both houses, by virtue of which action it became a law. There is no constitutional provision, however, requiring that the bill should be again returned to the Governor after his veto.

Furthermore, the Governor claims that he did not deposit the bill with the Secretary of State, but Mr. McCullough maintained that the Governor of a State will not strenuously insist that a law is void by reason of his own failure to comply with a law requiring him to file it, for no statute permits a man to plead his own wrong as his defense. The Constitution then must be looked to, said the attorney, and it provides that after a veto, as in the case after each House has, by a majority, agreed to pass the bill, it shall become a law. Each House must reconsider the bill and agree to pass it as signed, but if it was amended in any way changed it would not be the same bill. However, alteration in such a case would be impossible, for if it is passed over a veto it must pass as authenticated at the time of the veto. It would be a useless act to have the presiding officers further authenticate the bill, and hence it is submitted that it appears that the bill was filed in the Secretary of State's office, and that it was duly agreed to and passed over the Governor's veto, it, therefore, became, and is, a valid law.

It was furthermore claimed that the right of the Legislature to appoint as well as to create is a legal one. In 1868 the State Constitution, Mr. McCullough stated, authorized the Legislature to appoint six commissioners for the control of the Insane Hospital, corresponding to the three trustees now having charge of the institution, and that law continued until long after the convention of 1881. In Section 1, Article 9, of the State Constitution, it is provided that the duty of the Legislature shall be to protect and provide for the support of the institutions for the deaf, the dumb, the blind, and the insane, and Article 15 of the same section it says that all officers not provided for by law may be appointed by the laws then in force. The attorney claimed that the office of the Insane Hospital do not fall under that head, for they are not given a special provision by law. The Governor, in his suit, claims that the appointing power belongs exclusively to the executive and not to the legislative branch of the State government, and he bases his objections on that ground. If his objections are valid, then the State Constitution is a nullity, as it is evident that the Legislature has no right to appoint officers it may create; if not, then it has. The Constitution of the United States furnishes a good example, he continued, of the ground taken by the plaintiff, for it provides that the President shall fill all offices not provided for by law, but that in Congress rests the power of filling inferior offices not so provided for. Very evidently, this does not apply to the appointing of State Senators, or of the officers for each of the two houses of a State Legislature. The only power that the Governor has is to fill a vacancy in either house, in a State office or in the judgeship of the State, and the power is held, and this power is most certainly limited. To the State Legislature and not to him belongs the power of filling the offices in the State institution which are required protection by the Constitution.

In conclusion Mr. McCullough presented a long series of quotations from standard rulings. The decision Judge Howland did not look upon as a finality, as his action was somewhat of a formality. An appeal at once prayed for by the Attorney-General was granted.

Before the Supreme Judges.

Judge Robert Lowry, one of the certificate-holders who wants to serve as a member of the Supreme Court Commission proposed by the Legislature, filed a brief in the commission case, with the Clerk of the Supreme Court, yesterday, the principal difference between it and others filed being that Lowry's has a red back, while the backs of the others are white. The hearing of the oral argument has been set for tomorrow, and it is understood that by reason of the importance of the case the court rule limiting argument to an hour and a half on each side will be suspended and the attorneys given full swing in the discussion. No arrangement as to the addresses of counsel has been announced, but if the usual custom prevails the aspirants for the commissions, who are the plaintiffs, will be given the opening and closing speeches. It is intended to continue this argument with those relating to the Curtis, Bigham and the Insane Hospital bills. Judge Niblack and W. P. Fishback will appear for the Supreme Court Commission, although it is possible all claiming to be elected as such will speak briefly. Ferdinand Winter, A. C. Harris and Attorney-General Michener will be opposed to them on Friday the case will be heard, with Duncan & Smith for the claimants, and City Attorney Taylor, R. O. Hawkins and A. Harris for the Police Commissioners and city officers. On Saturday the Carson application for mandate against Governor Hovey will be heard. Attorney McCullough and Judge Hays, of Sullivan, appearing for Carson, and Secretary of State Griffin, Attorney-General Michener and Ferdinand Winter for the Governor.

The Bruce Litigants Unsuccessful.

The long continued Bruce litigation, which has been pending in the courts for a series of years, came to an end yesterday in the Circuit Court, Judge Howland practically settling all the questions at issue. In 1867 one William Ragan died, leaving to

his two daughters, Rachel Johnson and Dovey Bruce, eighty acres of land in the northeastern portion of the city, and valued at something over \$300,000. Soon after the will was admitted to probate, the Johnson inheritance was claimed by the heirs of Dovey Bruce, and a suit was instituted that has since been carried down through the various courts to the present time, with numerous modifications and cross-complaints. A final demurrer to the Bruce complaint was up to the Circuit Court yesterday, which Judge Howland sustained.

Election Cases Set for Trial.

District Attorney Chambers and his assistants are busily engaged in preparing for trial the ninety-three criminal cases set down for the month of April. It requires a great deal of labor to muster all the evidence, but they expect to be ready for all cases put on the calendar. To-morrow arguments on motions to quash indictments will be heard, and a great many such motions will be made. It is probable that the remainder of the time between now and next Wednesday, when the trial of cases is to begin, will be so used. Yesterday Judge Woods sustained a motion to quash the indictment against Geo. A. Anderson, who was charged with violating the election law.

The following are the persons who have been put on the April calendar for trial. They have been grouped by the district attorney according to the phase of the case in which they live, so as to accommodate witnesses, whose testimony will be serviceable in the several cases from their districts: Wednesday, April 2—George Washington, Ed. T. Appleby, Anthony Crothers, Ira Thompson, Mort C. Fusselman.

Thursday, April 3—A. W. Sharp, Amos Walker, Samuel E. Ensminger, Oliver Huffman, William W. Payton.

Friday, April 5—Frank Reader, James M. Fletcher, John B. Jones, Isaac N. Cotton, James Thompson, William Beakley.

Saturday, April 6—James Price, Amos Price, James Rodgers, Oliver W. Vorhis.

Sunday, April 7—James Orr, Joshua Early, Joshua Mullikin, Benjamin J. Keaton.

Monday, April 8—John C. Anderson, Thomas Roberts, Clarence Brockway, Osmer C. Brockway.

Tuesday, April 9—Oscar Bishop, Herbert H. White, John Bird, William Whitehead, Jefferson Savage.

Wednesday, April 10—John Knapp, Nicholas Jagers, Joseph Brickett, George A. Anderson.

A county auditor has no authority to increase an assessment beyond the sum ascertained and assessed as benefits in due course of law.

13064. Mary M. Motesinger et al. vs. Ada Fort et al. Madison C. C. Affirmed. Olds, J.—Exceptions to conclusions of law must be taken at the time the decree is made.

Petitions for rehearing overruled: 13515. Marion Swaine vs. Wm. F. Sanders et al. Montgomery C. C.

13516. Vincent vs. Town of Monticello. White C. C.

13509. Henry Gertz vs. Same.

13510. Frederick Lindman et al. vs. Same.

13511. James A. Anderson vs. Same.

742. Jessie C. Powers vs. Town of New Haven. Allen C. C. Motion to reinstate appeal overruled.

SUPERIOR COURT.

Room 1—Hon. J. M. Taylor, Judge.

Nora Fleming vs. Citizens' Street-railroad Company; damages. Judgment on verdict for defendant.

Richard vs. Sallie Harden; divorce. Abandonment and adultery. Granted to plaintiff.

Stephen D. vs. Mary J. Morgan; divorce. Abandonment. Granted to plaintiff.

Room 2—Hon. D. W. Howe, Judge.

Richard H. McCray vs. Davis M. Greene et al.; suit on contract. On trial by court.

Caroline Trautman vs. John Brennan; suit to quiet title. Dismissed at plaintiff's costs.

New Suit Filed.

Fannie Koons vs. Ulysses S. Grant Koons; complaint for divorce. Allegation, abandonment and failure to provide.

CIRCUIT COURT.

Hon. Livingston Howland, Judge.

Addie Kenoyer vs. Benjamin Charles, executor, et al.; contest of will. Motion for new trial sustained.

James A. Bruce et al. vs. George P. Bissell et al. Demurrers to complaint sustained.

State ex rel. James L. Carson vs. Alvin P. Hovey, Governor. Demurrer to answer sustained. Defendant elects to stand by his answer and declines to answer further. Judgment on demurrer in favor of plaintiff. Appeal to Supreme Court granted.

CRIMINAL COURT.

Hon. William Irvin, Judge.

State vs. Joseph Hoffbauer; receiving stolen goods. One year in work-house.

State vs. Henry Lautherstein; receiving stolen goods. On trial by jury.

PLAYERS ON THE DIAMOND.

The Practice at the Park Gives Promise of Good Service.

Several members of the local ball team are exasperatingly slow about reporting, and Manager Bancroft is growing very impatient on account of their failure to come. There are only four more days for practice before the exhibition season opens, and the management is quite anxious for the team to get in good shape before that time. The absence of the players is all the more to be regretted for the reason that the weather has been so fine for out-door work, and the additional fact that there is really no good reason why they should not be on hand. However, Bassett arrived last night, and it is probable that Getzein and Buckley will be here not later than to-night. Denny is supposed to be on the road from the coast, but cannot get here before to-morrow night or Friday morning.

Myers is overdue, and McGeechy promised to be on hand the first of the present week. These men are in condition to play ball when time is called next Monday, they will probably find their salaries proportionately short when pay-day arrives. A picked nine from the League and eight professionals already here, with young Rusie in right field for the latter, played a six-inning game at the park yesterday afternoon, the score standing 14 to 0 in favor of the Leaguers. Boyle, Burdick and Shreve all took a turn in the box and showed up well. The amateurs made two hits, taking the game from the professionals as they played, making eighteen hits. John Sowders, of the St. Paul team, pitched two innings for the picked nine and was batted hard.

Hewitt Claims Ward.

WASHINGTON, March 26.—Mr. Walter F. Hewitt, president of the Washington Baseball Club, returned to the city to-day from New York, where he went to see John M. Hewitt, who is the star of the League, in his new play, "Daddy Nolan," at English's the first part of next week. Both Mr. Wheeler and Mr. Sully have made marked successes in the profession.

Building Permits.

Building permits were issued yesterday to N. M. Noble, addition to property on Talbot avenue, near Eighth street, \$1,100; J. C. Meyer, addition to 74 Huron street, \$400; F. J. McClellan, addition to 182 Hoyt avenue, \$130; J. S. Church, improvements on 274 North Alabama, \$350; Amos C. McKenzies, frame dwelling on College avenue, near Lincoln, \$2,000; Mrs. Hugo, addition to property on Yeiser street, near East, \$300; N. W. Morris, repairs on 275 North Meridian street, \$300; Olive A. Cloud, frame cottage on Splawater avenue, near Laurel street, \$1,350.

## MINOR CITY MATTERS.

To-Day's Doings.

MURPHY GOSSIP TEMPERANCE MEETING.—Meridian-street Church, evening.

SCOTTISH RITE CONVOCACTION.—Temple, South Pennsylvania street, afternoon and evening.

COMBINATION HORSE SALES.—Stockyards, morning and afternoon.

CITIZENS' MEETING.—Electric Railway, Mayor's Office, evening.

GRAND OPERA.—Frank Mayo in "Nordeck," matinee, "Davy Crockett," evening.

PARK THEATRE.—"Black Flag," afternoon and evening.

EDEN MUSEE.—Wax Figures and Curiosities, afternoon and evening.

BATTLE OF ATLANTA CYCLOGRAM.—Market street, between Illinois and Tennessee, day and evening.

STATE CHRISTIAN TEMPERANCE UNION.—Annual meeting—True Friend Hall, When Block, 10:30 A. M. and 1:30 and 7:30 P. M.

Local News Notes.

Marriage licenses were granted yesterday to Charles McAllister and Maggie Bell; Arthur Nickerson and Cora M. Dell; John C. Ambuhl and Annie Short; George W. Roberts and Myrtle M. Fendley.

Articles of incorporation were filed with the Secretary of State yesterday, by the Greater Shoe Manufacturing Company, of Terre Haute, Capital stock \$15,000, David C. Greener, Jacob B. Greener and Jacob Baur incorporators.

Personal and Society.

Miss Carrie Wilson has returned from a six-weeks' visit to friends in Baltimore.

Mrs. W. H. Miller and daughters have returned from Washington, where they have been since the inauguration.

Miss Susie Clarke and cousin, Miss Effie Clarke, will leave in a few days for North Carolina to spend several months with relatives.

Mr. and Mrs. Samuel H. West, of Galveston, Tex., and Col. and Mrs. George Franklin, of Los Angeles, are guests of friends for a few days.

Sarah A. Osborn and Mrs. L. L. Lonsa, of Salt Lake City, guests of Mrs. L. L. Lonsa, and will remain a month or six weeks before going East for the summer.

Mrs. M. D. Black has gone to St. Louis to visit her daughter and family for a few weeks, and then she will go to Kansas City to visit other relatives for some time.

Mr. C. L. Herbert, who has made this city his home for the past four years, will leave next week for Tacoma, W. T., to join the Indianapolis colony and locate permanently.

A special meeting of the Indiana Commandery will be held at the New Denison on Friday evening of this week, to tender a farewell dinner to Major Charles C. U. S. A., who leaves the arsenal this month to take charge of government work at Columbia, Tenn.

The funeral services of Miss Sallie Holliday were held yesterday afternoon at the family residence, on North Meridian street. Rev. J. S. Jenkins, pastor of St. Paul's, of which church Miss Holliday was a member, was absent from the city, and Rev. J. H. Ranger, of Christ Church, read the funeral service and the quartet of St. Paul's choir sang two hymns. The burial was private, taking place at Crown Hill cemetery. Miss Holliday was particularly fond of flowers and her coffin rested in and was covered with blossoms sent by many friends among whom she was a great favorite.

Amusements.

At the matinee at the Grand this afternoon Mr. Mayo and his excellent company will present that picturesque romantic drama, "Nordeck," at popular prices. The engagement will conclude to-night, with the old-time favorite, "Davy Crockett," one of the most beautiful plays on the stage, which will be given by special request. It is the part which first gave Mr. Mayo his reputation, and his performance is one that will well repay attendance.

Lydia Thompson's big English burlesque company will present "Penelope" at the Grand to-morrow night, and "Columbus" on Friday night. Fifty-five people in the cast. Elegant costumes, good comedians and excellent music are promised. Seats are now on sale.

Mr. Will O. Wheeler, who is kindly remembered for his former residence in this city, where he worked on the Journal, and was otherwise a useful and ornamental citizen, came in last night to arrange for the engagement of his star, Daniel Sully, in his new play, "Daddy Nolan," at English's the first part of next week. Both Mr. Wheeler and Mr. Sully have made marked successes in the profession.

Stop it now! Not to-morrow, when it may have settled dangerously on the lungs, but to-day, counteract that cough, heal that irritating throat, and prevent the progress of pulmonary inflammation with Hale's Honey of Horehound and Tar. Sold by all druggists.

Pike's Toothache Drops cure in one minute.

Advice to Mothers.

Mrs. Winslow's soothing syrup should always be used when children are cutting teeth. It relieves the little sufferer at once; it produces natural, quiet sleep by relieving the child from pain, and the little child awakes as "bright as a button." It is very pleasant to taste. It soothes the child, softens the gums, allays all pain, relieves wind, regulates the bowels, and is the best known remedy for all the troubles arising from teething or other causes. Twenty-five cents a bottle.

ECZEMA CAN BE CURED.

The most agonizing, humiliating, itching, scaling, and burning Eczemas are cured by the Cuticura Remedies, when physicians and all other remedies fail.

I have been afflicted since last March with a skin disease the doctors called eczema. My face was covered with scabs and sores, and the itching and burning were almost unbearable. I have used your Cuticura Remedies so highly recommended, concluded to give them a trial, using the Cuticura and Cuticura Soap externally, and Resolvent internally for four months. I am now cured, in gratitude for which I make this public statement.

MRS. CLARA A. FREDERICK, Broad Brook, Conn.

Eczema Three Years Cured.

Cuticura Remedies are the greatest medicines on earth. Had the worst case of Salt Rheum in this country. My mother had it twenty years, and from it I believe I inherited. I would have saved her life. My arms, breast, and head were covered for three years, which nothing relieved or cured until I used the Cuticura Remedies.

J. W. ADAMS, Newark, O.

Eczema on Baby Cured.

My baby has been troubled with eczema on his face, neck, head, ears, and entire body. He was one mass of scabs, and we were obliged to tie his hands to prevent his scratching. I have spent dollars on remedies without effect, but after using one box Cuticura, and one cake of Cuticura Soap, the child is entirely cured. I cannot thank you enough for them.

12 Moll St., Brooklyn, E. D., N. Y.

Eczema on Hands Cured.

Two years and a half ago Salt Rheum broke out on my right hand. It appeared in white blisters, attended by terrible itching, and gradually spread until it covered the entire back of the hand. The disease next appeared on my left hand. I tried many remedies, but could not cure until I obtained the Cuticura Remedies, which effected a speedy and permanent cure.

ANDREW E. KEARNEY, 284, Wood Avenue, Detroit.

Serious and Fatal Accidents.

Miss Kate Kenned, a well-known visiting friend in this city, was seriously injured, yesterday afternoon, while riding in a saddle, her horse becoming unmanageable at the corner of Pennsylvania and Ohio streets. She was thrown to the ground, receiving several ugly bruises and cuts about the head and face. Dr. Henry Jameson dressed the wounds at his office. Harry Rogers, living at 318 Lincoln avenue, sustained some injuries yesterday afternoon, while working machinery in North Meridian street. Thomas McGlynn, 43 Russell avenue, was found dead in his bed yesterday morning. He was an employee of the City of Indianapolis, and had been on duty on Monday when he was kicked on the head by a mule which he was driving, but his injuries were not supposed to be serious.

## Now Is the Time

To purify your blood and fortify your system against the debilitating effects of spring weather. At no other season is the bitter taste in the mouth more prominent, the breath so offensive, the drowsy dizziness so frequent, or that extreme tired feeling so prevalent. Hood's Sarsaparilla is just the medicine to build up the system, purify the blood, cure biliousness and headache, overcome that tired feeling and create a good appetite. Try it this spring.

"I have taken three bottles of Hood's Sarsaparilla and consider it the best blood medicine I have ever taken. It builds me up, makes me sleep better, gives me a good appetite, and improves my health generally." MRS. A. F. LEIGHTON, Portland, Me.

The peculiar curative power of Hood's Sarsaparilla is shown by the many remarkable cures it accomplishes where others fail. "I wish to enroll my name as one of those who have derived health from the use of Hood's Sarsaparilla. For many years I have taken it, especially in the early spring, when I am troubled with dizziness, dullness, unpleasant taste in my mouth in the morning. It removes this bad taste, relieves my headache and makes me feel greatly refreshed. The two bottles I have used this spring have been worth a dollar a dose. I advise all my friends to take it." JOHN RININ, 693 43d Street, town of Lake, Chicago, Ill.

N. B. If you decide to take Hood's Sarsaparilla do not be induced to buy any other.

**Hood's Sarsaparilla**

Sold by all druggists, \$1; six for \$5. Prepared only by C. I. HOOD & CO., Lowell, Mass.

100 Doses One Dollar.

AMUSEMENTS.

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THIS AFTERNOON! TO-NIGHT!

The favorite romantic actor, M.R.

**FRANK MAYO,**

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Matinee this afternoon, "NORDECK." To-night, by special request, "DAVY CROCKETT."

Matinee prices: 25 and 50c to all parts of the house.

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Thursday and Friday evenings, March 28 and 29.

**LYDIA THOMPSON'S**

**Big Burlesque Company**

THURSDAY EVENING, "PENELOPE." FRIDAY EVENING, "COLUMBUS."

Regular prices. Seats on sale to-morrow.

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INDIANAPOLIS.

—VS.—

**CITY LEAGUE,**

THURSDAY AND SATURDAY, March 28, 30.

General Admission, 25 cents. Pavilion, 35 cents. Games called at 3 p. m.

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In bottles, to be had from Friday, March 22, on.

Spring Birds, Spring Flowers, Spring Music.

Are just at hand.

Musical Societies and Churches do well to send off the season with the practice of Cantatas or Glee Collections.

Among many good Cantatas, we publish: Thyagar's Herbert and Elm (75 cts., \$6.75 per doz.) Bunker's The Bell (60 cts., \$5.40 per doz.) Brock's 46th Psalm (81 cts., \$6.48 per doz.) Butterfield's Belshazzar (81 cts., \$6.48 per doz.) Anderson's Wreck of the Hesperus (85 cts., \$6.75 per doz.) Buck's Don Music (81 cts., \$6.48 per doz.) Townbridge's Heroes of '76 (81 cts., \$6.48 per doz.) Hodges's Rebecca (65 cts., \$5.40 per doz.) Andrews's Ruth and Boaz (65 cts., \$5.40 per doz.)

School Committees, Superintendents and Teachers cannot do better than to adopt our New, Tried and True School Music Books.

Emerson's Song Manus. (Bk. 1, 30 cts., \$3.00 per doz., Bk. 2, 40 cts., \$4.00 per doz., Bk. 3, 50 cts., \$5.00 per doz.) A thoroughly good graded series. United Voices (50 cts., \$5.00 per doz.) Good School Songs. Song Harmony (50 cts., \$5.00 per doz.) For High Schools. Children's School Songs (35 cts., \$3.50 per doz.) Charming book for younger classes, and many others. Any book mailed post free, for retail price.

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**A STITCH IN TIME**

This is the time of year that makes a fellow think of Spring clothes. The old winter suit is clumsy and shabby. It has served its time, and should be laid aside and replaced with one of our new spring suits. We are showing an endless variety of styles in Plaids and Checks, which we make to measure.

**SUITS TO ORDER—\$20 TO \$40**

These prices mean—well made, well trimmed and stylishly cut. If you are not ready for a suit, we shall be pleased to show you a full line of novelties in Spring Trouserings.

**PANTS TO ORDER—\$5 TO \$10**

Samples and Rules for Self-measurement by mail.

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